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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 619

HELEN CALHOUN CASH,

Appellant,

vs.

THE METROPOLITAN TRUST COMPANY AND THE PEOPLE OF THE STATE OF ILLINOIS.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS.

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Counsel for Appellees.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 619

HELEN CALHOUN CASH,

Appellant,

vs.

THE METROPOLITAN TRUST COMPANY, CONSERVATOR, A CORPORATION; PEOPLE OF THE STATE OF ILLINOIS,

Appellees.

APPEAL FROM SUPREME COURT OF ILLINOIS.

APPELLEES' OPPOSING JURISDICTIONAL STATEMENT AND MOTION TO DISMISS APPEAL.

The appellees, believing that the matters set forth below will demonstrate that no federal question is fairly involved, the lack of substance in the questions raised by this appeal, and that if there were a federal question it was abandoned, file this their statement in opposition to appellant's statement as to jurisdiction.

Appellees include herein their motion to dismiss the appeal or in the alternative to affirm the judgment of the Supreme Court of Illinois on the ground that there is no

federal question involved and that the questions raised on behalf of appellant are so unsubstantial as not to need further argument, as appears from the face of this record.

The matters relied upon by appellees are more particularly stated below:

Preliminary Statement of the Case.

The appellant, Helen Calhoun Cash, was adjudged insane by an order entered in the County Court of Kane County, Illinois, on May 23, 1938. She was committed to Resthaven Sanitarium, an institution for the treatment of mental cases, located at Elgin, Illinois. No appeal was taken from that judgment. On September 1, 1938, after the expiration of the term at which the judgment was entered, appellant filed a petition in said County Court to vacate the judgment of insanity on the ground that she was not a resident of Kane County and had been brought into said County by fraud and duress. She charged that the judgment was void by reason of the fact that the court had no jurisdiction over her. The only other ground mentioned in the petition was that the petitioner was not a "reputable person" within the meaning of the statute. The petitioner was a nurse a Resthaven Sanitarium. No other grounds for vacating the judgment were alleged.

A full hearing was had before the County Court and her petition was denied. An appeal was taken to the Circuit Court of Kane County and a trial de novo was had according to the Illinois practice. The Circuit Court affirmed the decision of the County Court. An appeal was then taken to the Appellate Court of Illinois and the cause reversed and remanded to the Circuit Court for the reason that no briefs were filed by appellees. Appellant then amended her petition and included therein an additional point that no Clerk or Sheriff was present at the inquest into her sanity, and this additional ground is the founda-

tion for the asserted jurisdiction of this court. Appellant contended that because no Clerk or Sheriff was present at the time the medical commission conducted the inquest in the presence of the judge, she was denied due process of law. The amended petition raised that point in the following language (R. 80):

> "Petitioner further says that on or about the 23rd day of May, 1938, the County Judge of Kane County and the Assistant State's Attorney of Kane County appeared at the Resthaven Sanitarium accompanied by two doctors, and asked the petitioner many questions, but petitioner was not advised nor was she aware that a court proceeding was being held, that she was not asked if she desired counsel nor trial by jury. That there was no Clerk, Sheriff or Bailiff present, and that said proceeding was in violation of the Constitution of the United States and the Constitution of Illinois, concerning due process of law, and that because of said reasons the orders entered in said proceedings were null and void."

However, this constitutional question (which is the basis of this appeal) was not mentioned again until petition for rehearing, after the decision of the Illinois Supreme Court.

The People of the State of Illinois filed an answer averring that the proceedings had all been conducted according to law.

Another hearing was had before another Judge of the Circuit Court of Kane County and the judgment of the County Court was again affirmed and the amended petition denied. Appellant again prosecuted an appeal to the Appellate Court of Illinois where the judgment was affirmed. From there she appealed to the Supreme Court of Illinois and the judgment was again affirmed. The appeal to this Court is the last step in the series of proceedings to review the action of the County Court of Kane County denying the prayer of the petition.

In her petition and amended petition, appellant charged that she had been first imprisoned in the Stevens Hotel in Chicago, and taken from there by her sister and other persons to a sanitarium known as the Parkway Sanitarium, and from there to Resthaven Sanitarium at Elgin, Illinois, where she was confined for a period of time and denied access to attorneys and friends. She claimed that the County Judge conducted an informal hearing in the presence of two doctors without any advance notice of the hearing given to her and without any opportunity given to her to demand a jury or counsel.

It is significant to note that appellant never in any of her pleadings or arguments in the State courts claimed she was not actually insane at the time of the hearing. She remained in Resthaven Sanitarium for several months in 1938 after the commitment and was then released. She has not to our knowledge been confined in any institution whatever for at least five years past. She at one time in 1938 after her commitment instituted a habeas corpus proceeding in the Circuit Court of Kane County, Illinois, questioning the validity of her commitment, but after a full hearing was found to be legally committed and still insane, by another Circuit Judge. Shortly after that, she was released from the institution, but has never attempted to be declared restored to reason by court order.

The record shows conclusively that the appellant had been living in Florida prior to her coming to Illinois and had been adjudged insane by the County Court of Monroe County, Florida, on April 28, 1938. She was committed to an institution in that State. She summoned her sister, Dr. Henrietta Horner of Albany, New York, (R. 200) and a friend, Miss Keeler, from Chicago to come to her assistance. Her sister and her friend secured her release from the Florida authorities and brought her to Chicago. The record shows that many doctors and psychiatrists were

called in to examine her, some of which were of her own selection. It likewise shows that none of the allegations of her petition concerning fraud or duress were true. The transcript of the Florida proceedings show that appellant's insanity was acute and her propensities were dangerous. (See supplemental report of proceedings) The record shows that her closest relatives and friends were endeavoring at all times to do everything they could for her in the way of securing the best medical attention and the care which her condition required. It was necessary that someone should have her in a sufficient degree of control to prevent her dangerous propensities from resulting in injury to herself and the public. All the courts of Illinois have found that everything done by her sister, friends, sanitarium authorities or County officials was at all times proper and necessary due to her unfortunate condition, and were the things normally required of relatives and friends under the circumstances.

The opinion of the Supreme Court of Illinois recites these facts in some detail and we respectfully direct the attention of this Court to that opinion. It is sufficient to say at this point that the conclusions of fact contained in appellant's jurisdictional statement before this Court *are not supported by the record.*

The only point at issue was whether the County Court had jurisdiction over appellant so as to render a valid judgment. The question whether the statute had been followed in literal detail was beside the point. The issue was limited to the validity of the original judgment.

Appellant alleges in her jurisdictional statement that she was not advised that a legal proceeding was being held at the time she attended the inquest, and that she received no notice thereof. The record (pg. 7) however, shows that she was served with a statutory notice two days before the

holding of the inquest. In this connection the Illinois Supreme Court opinion says:

> "The record conclusively shows that appellant was given notice of the hearing two days prior to May 23. It is conclusively established that she was physically present in Kane County when notified and she was present at the inquest. No one doubts her physical presence in the County on May 19, when the petition for the inquiry was filed."

Appellant attempted to impeach this record on appeal by testifying that she received no notice of the hearing. When the Supreme Court of Illinois discusses the matter of verity of court records, it was referring to that point, that is, inasmuch as the record shows that notice had been served, it could not be impeached by appellant's oral testimony offered in another court at a later hearing. It must be remembered that appellant was an insane woman.

Appellant claims that she was given no opportunity to have a jury trial or counsel, but the record does not show she ever demanded either. The record does show, however, a complete and thorough hearing which lasted about two hours (R. 252). Both of the doctors on the commission testified that the patient was insane, suffering from manic-depressive psychosis and that she had delusions of persecution (R. 231-241). She admitted that Resthaven Sanitarium, the place where she was confined, was a "nice place" and never at any time gave any specific instance of unkind or harsh treatment by any person. There is absolutely no evidence that she was prevented from communicating with friends. The statement to that effect is unfounded, and it must be remembered that her relatives and friends—at least the only friends who have been revealed—were the very persons instrumental in placing her in the institution and who at all times knew where she was. She said that she wrote to her lawyer and he did not receive the

letter. That was hearsay and supposed to have occurred long after the inquest. Of course it could not affect what had gone before (R. 193).

The Illinois Lunacy Act provides for the appointment of a commission of two physicians practicing in the County to conduct the inquest. The commission holds an inquest and files a report with the Clerk of the Court, and then the Court enters an order based upon that report. The *Court* acts when the order is entered. This method of handling lunacy cases is apparently of anicent origin and fairly common in the practice of several States. A lunacy proceeding is not a proceeding according to common law and is generally referred to as a special statutory proceeding. The alleged insane person has the benefit of notice of the inquest, presence at the inquest, unless her physical condition is such as to make it manifestly improper, and an opportunity to rebut evidence of insanity. This, too, is almost universal in the practice of several States. In other words, there is nothing novel about Illinois procedure in such cases.

Appellant contends that the Illinois statute concerning lunacy inquests was not followed. However, the record shows that a petition was filed accompanied by the certificate of a practicing physician certifying that the patient was insane. A notice was duly given to the appellant. The County Judge appointed a commission of two practicing doctors who in his presence examined the patient and submitted a report in writing that she was insane which was duly filed in court and the order of insanity entered by the Judge.

The most that can be said on behalf of appellant is that the Lunacy Act, as appellant construes it, has not been in some points followed. However, no court has ever construed the Act as appellant does, and the Supreme Court of Illinois in this case has not overturned the law of Illinois,

as counsel for appellant would have us suppose. Moreover, errors in the course of the proceeding would not make the judgment void. In each of the courts where this case has been considered, the court construed the Lunacy Act to the effect that it is not necessary for the medical commission to conduct the inquest in the presence of the fully organized court; that the presence of the judge and the patient and the medical commission were all that were required. The decision of the Illinois Supreme Court went no farther than the decisions of the lower courts, so there was nothing in the opinion finally rendered to cause surprise.

As previously stated, appellant alleged in her amended petition in the Circuit Court that the proceedings were in violation of the Federal and State Constitutions with reference to due process of law. However, she waived this constitutional question by appealing to the Appellate Court of Illinois which has no jurisdiction of constitutional questions. The Illinois statute provides that appeals on constitutional questions must be taken direct to the State Supreme Court. The applicable statutory provision is as follows:

> "Appeals shall be taken directly to the Supreme Court in all cases in which a franchise or freehold or the validity of a statute or a construction of the Constitution is involved, and in cases in which the validity of a municipal ordinance is involved and in which the trial judge shall certify that in his opinion the public interest so requires, and in all cases relating to revenue, or in which the State is interested as a party, or otherwise."
>
> Ill. Revised Statutes, Chap. 110, Sec. 199.

Under Illinois practice this appeal was a waiver of the constitutional question which she now seeks to revive.

The Illinois Lunacy Act further affords a person alleged to be insane a remedy of habeas corpus, either to determine the validity of her commitment or the question of recovery

from mental illness. The applicable provision of the statute is as follows:

> "Every person confined as insane shall be entitled to the benefit of the writ of habeas corpus, and the question of insanity shall be decided at the hearing, and if the judge shall decide that the person is insane such decision shall be no bar to the issuing of the writ a second time whenever it shall be alleged that such person has been restored to reason."
>
> Ill. Revised Statutes, Chap. 85, Sec. 24.

As previously pointed out, appellant availed herself of this remedy and the issue was resolved against her.

The case was tried and decided in the State courts of review upon the questions whether appellant was subject to the jurisdiction of the County Court of Kane County, and whether the *Illinois statute* required the Court Clerk and Sheriff to attend an inquest before a medical commission. Appellees contended that there was no fraud or duress and that the court had jurisdiction over her; also that no Clerk or Sheriff need attend the inquest. Each court decided for appellees, and the decision of the Supreme Court of Illinois was within the issues and should have been anticipated; it is what appellees urged the court to do, and what appellant resisted.

Propositions of Law and Authorities.

I.

The Federal question was not entertained or decided by the State court, and this Court has no jurisdiction to pass upon the case; it was decided upon non-federal grounds.

Herndon v. *Georgia*, 295 U. S. 441, 55 S. Ct. 794;

Pennsylvania Railroad Co. v. *Illinois Brick Co.*, 297 U. S. 447;

New York ex Rel. Cohn v. *Graves*, 300 U. S. 308.

II.

The Federal question was first raised in the State Supreme Court upon petition for rehearing, and came too late.

Rooker v. *Fidelity Trust Co.*, 261 U. S. 114;

Herndon v. *Georgia*, 295 U. S. 441, 55 S. Ct. 794;

Godchaux Company, Inc. v. *Estopinal, Sheriff, etc.*, 251 U. S. 179.

III.

The same Federal question was raised in the State Circuit Court, and waived by appealing to the State Appellate Court rather than appealing direct to the State Supreme Court.

Pennsylvania Railroad Co. v. *Illinois Brick Co.*, 297 U. S. 447;

Van Dyke v. *Illinois Commercial Men's Assn.*, 358 Ill. 458, 193 N. E. 490;

Illinois Revised Statutes, Ch. 110, Sec. 199, 218.

IV.

This Court will not entertain an appeal unless there is a substantial Federal question involved and there is none in this case.

Honeyman v. *Hanan*, 300 U. S. 14, 57 S. Ct. 350;

Mellon v. *O'Neil*, 275 U. S. 212, 48 S. Ct. 62.

V.

This Court will adopt the construction placed upon a State statute by the State Court.

Minnesota ex Rel. Pearson v. *Probate Court*, 309 U. S. 270;

Simon v. *Craft*, 182 U. S. 427.

VI.

The Illinois Lunacy Act as construed by the decision in this case affords appellant all guarantees of due process of law.

29 Am. Jur., pg. 663;
Dodge v. *Cole*, 97 Ill. 333;
Chaloner v. *Sherman*, 242 U. S. 455;
Simon v. *Craft*, 182 U. S. 427;
Hammon v. *Hill*, 228 Fed. 999;
Illinois Revised Statutes, ch.;
People v. *Gilbert*, 115 Ill. 59.

VII.

The decision in this case does not change the Illinois law and the construction given the statute should have been anticipated.

Herndon v. *Georgia*, 295 U. S. 441;
Haines v. *Cearlock*, 184 Ill. 96.

ARGUMENT.

I.

The Federal question was not entertained or decided by the State court, and this Court has no jurisdiction to pass upon the case; it was decided upon non-federal grounds.

Although the constitutional question which appellant now relies upon as giving this Court jurisdiction was raised in the amended special petition filed in the Circuit Court of Kane County, the case was tried and decided in the Appellate Court of Illinois and the Supreme Court of Illinois upon non-federal questions. There were several of these, but for present purposes it is sufficient to say that appellant contended in the State courts that the Illinois statute required the presence of the Court Clerk and Sheriff at the

inquest conducted by the Judge and medical commission, and appellees contended that under that statute the presence of the Clerk and Sheriff were not required.

The possibility that the State courts might construe the statute in accordance with appellees' theory was always present, but the point that the statute if thus construed would be repugnant to the due process clause of the Fourteenth Amendment to the Constitution of the United States was first raised upon appellant's petition for rehearing which was filed in the Supreme Court of Illinois after the case had been heard and decided by that court. As argued under Point II, the proposition was raised too late.

The record in this case shows that the Supreme Court of Illinois did not pass upon any constitutional question in deciding the case, and did nothing more than deny the petition for rehearing. The State court, therefore, could not have erred in its decision of a federal question for the reason that it never entertained or considered a federal question.

New York ex Rel. Cohn v. *Graves*, 300 U. S. 308;

Pennsylvania Railroad Co. v. *Illinois Brick Co.*, 297 U. S. 447;

Herndon v. *Georgia*, 295 U. S. 441.

II.

The Federal question was first raised in the State Supreme Court upon petition for rehearing, and came too late.

Federal questions, constitutional or otherwise, must be timely and properly raised and put in issue as is required of non-federal questions. Moreover, they must be raised at the first opportunity.

Herndon v. *Georgia*, 295 U. S. 441.

The function of this Court is to review the action of the State court in passing upon federal questions. If no federal question was raised in the proper way and at the proper time so as to be passed upon by the State court and involved in its decision, then there is no federal question in the case which this Court can review.

Rooker v. *Fidelity Trust Co.*, 261 U. S. 114;

Godchaux Company, Inc. v. *Estopinal, Sheriff, etc.*, 251 U. S. 179.

As pointed out in the cases cited, the point raised by the petition for rehearing, where the federal question is not actually entertained and passed upon, comes too late for the reason that the case has already been decided upon the issues made by the litigants. A federal question does not become involved by the mere filing of a petition for rehearing. What is done after the case is decided cannot affect the decision already made.

III.

The same Federal question was raised in the State Circuit Court, and waived by appealing to the State Appellate Court rather than appealing direct to the State Supreme Court.

Appellant recognized the possibility of a federal question when the case was remanded to the Circuit Court of Kane County for the second trial. It was at that time that she sought and obtained leave to amend her special petition for the sole and only reason of making the additional point that the holding of the inquest by the Judge and medical commission in the absence of the Court Clerk and Sheriff resulted in a denial of due process under State and Federal Constitutions (R. 73). The pertinent para-

graph of the amended special petition is quoted in the preliminary statement at the beginning of this document. The point raised in the amended special petition is the same point which is made here. Plaintiff thus early recognized and relied upon the federal question. Even then it may not have been raised at the first opportunity, but at least it was not first thrust into the case at any later time.

Each of the three State courts which passed upon the amended special petition and the evidence taken thereon, held that under the Illinois statute it was not necessary for the Court Clerk or Sheriff to be present. The alleged federal question was, therefore, just as much involved in the decision of the Circuit Court and Appellate Court as in the decision of the State Supreme Court. They all construed the State statute the same way.

The question of due process of law which was thus raised in the Circuit Court of Kane County was necessarily involved in its decision. If appellant had chosen to assign error on this point she could have appealed directly to the Supreme Court of Illinois.

> "Appeals shall be taken directly to the Supreme Court in all cases in which a franchise or freehold or the validity of a statute or a construction of the Constitution is involved, and in cases in which the validity of a municipal ordinance is involved and in which the trial judge shall certify that in his opinion the public interest so requires, and in all cases relating to revenue, or in which the State is interested as a party, or otherwise."
>
> Ill. Revised Statutes, Chap. 110, Sec. 199.

The Illinois Supreme Court has held on numerous occasions that the taking of an appeal to the State Appellate Court rather than the Supreme Court constitutes a waiver

of the constitutional question and this Court has recognized and given effect to that practice.

Pennsylvania Railroad Co. v. *Illinois Brick Co.*, 297 U. S. 447;

Van Dyke v. *Illinois Commercial Men's Assn.*, 358 Ill. 458, 193 N. E. 490.

IV.

This Court will not entertain an appeal unless there is a substantial Federal question involved, and there is none in this case.

As previously pointed out in our statement of the case, the only issue raised in the original petition filed by appellant was whether or not the original judgment of the County Court was wholly void for want of jurisdiction. Questions of error could not be raised because no appeal was taken from the original judgment. She was trying to have the judgment set aside after the lapse of the term.

She did not even claim that she was improperly committed because she was not in fact insane. In other words, her objection was that she was committed by the wrong court. Later she also objected that the court was not properly constituted.

It has previously been pointed out that she has not been restrained of her liberty for more than five years past. Her actual liberty then is not involved in this proceeding. A conservator was appointed for her estate, which is not acting and one of the appellees in this case. At any time after the appellant recovered her sanity she could easily have been restored to her civil rights and her conservator discharged. Her conservator would, of course, be compelled to account to her for her property under the direction of the Probate Court which appointed it.

Therefore, it cannot be said that either the liberty or the property rights of the appellant are involved in this proceeding. She already has one, and she could easily have the other, if she is sane and capable of assuming the responsibility. The only reason why the appellant has so persistently carried on appeal after appeal in this litigation over a period of five years is that she still has those delusions of persecution which she had at the time she was originally found insane. She has turned upon her friends and relatives and is motivated entirely by a relentless determination to get revenge upon all of them for the imaginary wrongs done her. *She wants that original commitment in the sanitarium held void so that she can sue them all for false imprisonment.* We do not believe this a substantial federal ground with which to invoke the jurisdiction of this Court.

Appellant had also been found insane by the County Court of Monroe County, Florida, on April 28, 1938, which was less than a month before the inquest was held in Kane County, Illinois. The transcript of that proceeding appears in the supplemental report of proceedings following page 253 of the Record. It shows appellant to be insane and to have dangerous propensities. This judgment was not appealed from and is still in full force and effect and is entitled to full faith and credit.

Chaloner v. *Sherman,* 242 U. S. 455.

The Record also shows that appellant raised the issue of her sanity by habeas corpus proceedings in the Circuit Court of Kane County and that she was found to be insane, and that the commitment was valid. We have every reason, therefore, to believe that appellant was in fact insane and that no injustice has been done. The matter of her sanity, which is the real issue, has been inquired

into by several courts on various occasions; she has had adequate opportunity to be heard.

V.

This Court will adopt the construction placed upon a State statute by the State Court.

The interpretation and construction of a State statute is a non-federal question.

Minnesota ex rel. Pearson v. *Probate Court*, 309 U. S. 270;

Simon v. *Craft*, 182 U. S. 427.

The result is that this Court will adopt the view that the Illinois statute did not require the Court Clerk or Sheriff to be present at the inquest held by the County Judge and medical commission. That is the construction placed upon that statute by all the State courts—County Court, Circuit Court, Appellate Court and Supreme Court.

VI.

The Illinois Lunacy Act as construed by the decision in this case affords appellant all guarantees of due process of law.

The constitutional guarantee of due process requires notice and a hearing according to some regular procedure adapted to the nature of the case.

The procedure required by the Illinois statute is a direct outgrowth of the practice before the Chancellor in England whereby the State in its character of *parens patriae* conducted an inquiry into the mental condition of subjects of the Crown and exercised effective control over their persons and estate if they were found insane.

28 Am. Jur., pg. 663.

Dodge v. *Cole*, 97 Ill. 333.

The question of insanity was submitted to a commission under the ancient practice, which investigated the mental condition of the alleged insane person and made its report to the Chancellor, whereupon he entered the necessary order. The Illinois practice is substantially the same; the County Judge rather than the Chancellor appoints the commission, sits with it, and after the filing of its report with the Clerk of the Court, the Judge enters the necessary order. Surely a practice of such long standing must be considered as adapted to the nature of the case.

The Illinois statute requires notice to the alleged insane person and a hearing at which such person shall be present unless his or her mental and physical condition is such that it would be manifestly improper. This latter fact, if such be the case, must be established by an affidavit to that effect filed in the proceeding. It is thus apparent that the Illinois statute satisfies the requirements of due process of law as to notice and an opportunity to be heard.

Chaloner v. *Sherman*, 242 U. S. 455.
Simon v. *Craft*, 182 U. S. 427.

The Illinois statute further provides that repeated writs of habeas corpus may be sued out to inquire into the question of insanity or recovery of reason. In one case at least this ready remedy was held to bring the New York statute within the bounds of due process.

Hammon v. *Hill*, 228 Fed. 999.

The result is that under Illinois law the judgment of the County Court in a lunacy proceeding does not have such far-reaching consequences. It does not result in a judgment binding upon the alleged insane person upon principles of *res adjudicata*. The alleged insane person can file a petition for writ of habeas corpus in the Circuit Court forthwith and in that way obtain a full and complete re-

hearing of the question of insanity. The substantial result, therefore, is that no one can be denied his liberty or property under this statute without an opportunity to be heard.

People v. *Gilbert*, 115 Ill. 59.

VII.

The decision in this case does not change the Illinois law and the construction given the statute should have been anticipated.

Appellant contends that the decision of the Supreme Court of Illinois in this case is contrary to earlier decisions of that Court construing the Illinois statute, and that the Illinois law governing such proceedings (and upon which she relied) was revolutionized.

The precise point under consideration is whether the medical commission must conduct the inquest in the presence of a fully organized court rather than in the presence of the County Judge alone. This question had never been raised before in the reported decisions in Illinois and therefore appellant could not have relied upon any decision on that point by the Supreme Court of Illinois. The case of *Haines* v. *Cearlock*, 184 Ill. 96, which is pointed out by appellant as the case upon which she relied, and upon which she had a right to rely, did not decide that point. The question was not raised in that case.

At the time of the decision in *Haines* v. *Cearlock*, the Illinois statute did not expressly provide for the presence of the Judge at the inquest or for a notice to the alleged insane person. However, the Illinois Supreme Court said that the Illinois statute, by necessary implication, required notice to the alleged insane person and the presence of the Judge at the medical inquest. Nothing was said about conducting the inquest before a court or that it was necessary

for the Clerk of the Court and Sheriff to be present. In the course of the opinion the Court said:

> "The statute contemplates a hearing, which necessitates the presence of the Judge, and the presence of the patient is indispensable * * * If the Judge approves the finding he may enter an order, and the judgment entered is the judgment of the Court."

In the decision in the instant case the Court said:

> "The Lunacy Act authorizes the Judge to appoint a commission of physicians, who, in his presence, conduct the inquisition, make and file with the Clerk their report and findings as to the respondent's sanity, and upon that report the Judge pronounces his judicial order and the Clerk enters it of record."

The cases are therefore consistent. They both hold that the Judge should be present when the commission conducts the inquest, that the commission should file its report and findings with the Clerk of the Court and that the Judge thereupon enters an order which becomes the judgment of the Court. There is certainly nothing in *Haines* v. *Cearlock* to justify appellant in assuming that the Court had declared that the Court Clerk and Sheriff should also attend the inquest, and that their failure to do so would render the lunacy proceeding void.

There certainly was no ground for surprise, or reason that the decision of the Supreme Court of Illinois should not have been anticipated. *Haines* v. *Cearlock* was cited in each of the State courts which passed upon this case and each of those courts held that it was not essential to the validity of an inquest conducted by a medical commission that it take place in the presence of a fully organized court. These decisions of the lower courts should at least have suggested to appellant the possibility that she was misconstruing the Lunacy Act. We might even venture to say

the decisions of the lower courts at least raised a presumption that appellant's construction was wrong.

The fact that the constitutional question was raised by amending the petition in the Circuit Court demonstrates, to our way of thinking, that the decision of the Supreme Court of Illinois was actuallly anticipated at that time. Appellant saw, as she must have seen, that if the inquest had been conducted as required by the Illinois statute—that is, that no Clerk or Sheriff need be present—that the question whether such procedure conflicted with the due process clause of the Fourteenth Amendment to the Constitution of the United States was involved in the case.

Herndon v. *Georgia*, 295 U. S. 441.
Haines v. *Cearlock*, 184 Ill. 96.

The decision of the Supreme Court of Illinois was not different from the decisions of the lower courts. The constitutional question was just as readily apparent in the decisions of the lower courts and just as clearly involved, and there is no reasonable basis for the contention that the federal question first became apparent upon a reading of the opinion of the Supreme Court of Illinois filed in this case.

Neither is there any indication in the record of any discrimination against appellant. She has always felt that she was being persecuted and that is one of the symptoms of her illness. First it was her friends and relatives; then the County officials and now it is even the Supreme Court of Illinois which is supposed to be going out of its way to deny her rights which are accorded to other people similarly situated. There certainly is no indication in this record that the decision of the Illinois Supreme Court is arbitrary and capricious as appellant alleges or that there was any avoidance of a federal question or attempt to prevent appellant from seeking a remedy in this Court.

MOTION TO DISMISS.

WHEREFORE appellees respectfully submit this statement of matters and things making against the jurisdiction of this Court, showing that there is no federal question involved and showing also the unsubstantial character of the questions raised by the appellant, and appellees respectfully move the Court to dismiss this appeal, or in the alternative to affirm the decision of the Supreme Court of Illinois.

Respectfully submitted.

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